REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

ADOPTION CAUSE NO 5 OF 2018

IN THE MATTER OF: CHILDREN'S ACT NO. 8 OF 2001

IN THE MATTER OF: APPLICATION FOR ORDERS OF ADOPTION OF BABY TM (MINOR CHILD)

BETWEEN

HAH

SJK……...…….…. JOINT APPLICANTS

AND

KKPI ADOPTION SOCIETY……..…….RESPONDENT

JUDGEMENT

1. Through an originating Summons dated 2.2.2018, and filed on 7.3.2018, HAH and SJK (*herein after the "1st and 2nd applicants respectively), moved this court seeking orders as follows:* ***that Moses Asiego Ontuga be appointed as guardian Ad litem; that they be authorized to adopt baby TM(minor); that upon adoption the minor's name to change to ZHH; that the minor be declared a Kenyan citizen; that the Children's Officer to file asocial inquiry report; that the Registrar General to enter the minor's name in the Adopted Children's Register and costs of the suit.***

2. The application is premised upon particulars stated in the joint affidavit sworn by the applicants on 2.2.2018 in which they averred that: they are Kenyan Citizens practicing Islam religion: they are financially stable and ready to take care of the minor and that, they desire to give the minor all their love and affection.

3. The applicants who are husband and wife celebrated their marriage before the Kadhi's Court Mombasa on 9.10.2009. The first applicant born 11.11.1978 is a [particulars withheld] currently working as a Consultant at [particulars withheld] earning Kshs 150,000 per month. The second Applicant born 12.12.1978 is a [particulars withheld] by profession working at [particulars withheld] earning Kshs. 108,858.

4. However, the couple has not been blessed with any biological child. Their motivation to adopt the baby has been propelled by; the desire to provide love and protection to a needy child; the urge to provide the child a permanent, safe and healthy environment with positive Support; to give parental guidance to the child; to build their family so that it becomes larger and, to provide a nurturing environment that provides relationships that last a life time.

5. Regarding the child, she was born on 31.12.2016 at Pona Hospital to Ms. PWG. On 6.1.2018 the mother approached KKP1 Adoption Society with the intention of offering the Child for Adoption. After being taken through explanatory Memorandum, she signed a certificate acknowledging and confirming that she had well understood the consequences of her actions.

6. Subsequently, a vacancy was secured for the child at New Life Trust, Nairobi where she was admitted for temporary custody. Vide Nairobi Children's Court Protection and Care Case No. […], the minor was formally committed to New Life Home Trust for a period of 3 years.

7. The child was declared free for adoption on 31.5.2017. In October 2017, the child was placed under the care and control of the Applicants for a mandatory continuous period of three months pursuant to Section 157 (i) of the Children Act.

8. Upon instituting the suit herein, MAO was on 5.2.20 appointed Guardian Ad Litem and the Director Children Services directed to file a social inquiry report. Prior to the hearing, the office of the Director Children Services filed its report dated 2.6.2020 approving and recommending the adoption. The Guardian Ad Litem filed his report dated 10/2/2020 also recommending the adoption. On their part, the KKPI adoption Society approved and recommended the adoption vide their report dated 16.5.2018.

9. The aforesaid reports described the applicants as financially stable, Christians, with no criminal record, responsible and caring, mentally and physically fit. They basically urged that the adoption is in the best interests of the child.

10. During the hearing, the applicants pleaded with the court to allow them adopt the baby. They acknowledged and confirmed that they had understood the consequences of adoption and that it was permanent

11. I have considered the application herein, materials in support and evidence by various witnesses. The issues that emerge for determination are: whether the child is suitable and legally available for adoption; Whether the applicants are suitable to adopt the baby and, whether the adoption is in the best interest of the child.

12. The child herein is said to have been given voluntarily by the mother for adoption. The reason stated for giving out the child by the mother is that, she did not want to conceive and that she lacks the ability to look after the child. The biological mother signed the consent (Certificate) voluntarily on 6.1.2017. The child was offered for adoption after six months which is way above the six weeks minimum age for a child to be adopted.

13. Pursuant to Section 156 of the Children Act, the child has been declared free for adoption. The child having been born in Kenya by a Kenyan Mother is deemed to be a Kenyan citizen. Section 157 of the Children Act provides that; **"any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen or was or was not born in Kenya**" In view of the fact that the child is a Kenyan citizen offered by the biological mother for adoption, I am satisfied that the child is available legally for adoption.

14. Concerning the adoptive parents, they were born in 1978. They are aged about 43 years hence satisfying the age bracket for adoptive parents pursuant to Section 158 of the Children Act which has set the age as not below 25 years nor above 65 years. They are Kenyan citizen thus qualifying the adoption process as a local one.

15. Socially and economically, they have been described by stakeholders as Financially stable, caring and loving, reasonable and Christians with no criminal record. From their testimony, they expressed their attachment with the child with whom they have fully bonded. They also understand the consequences of adoption. I have no doubt they are suitable and have met the requisite conditions to adopt the baby.

16. As regards the question whether the adoption is in the best interests of the child this court is enjoined to uphold the cardinal consideration of the best interests of a child underpinned under Article 53 (2) of the Constitution and Section 4 (2) and (3) 2 the Children Act.

17. Indeed, the child's best interests is critical and worthy considering before making any orders affecting his/her welfare. See **Civil Appeal No. 30/2016 NMM V JOW (2016) eKLR** where the court stated that *"Accordingly**, the principle of the best interests of the child is the supreme parameter in matters concerning the welfare of a child such as the question of the custody of the subject child …"***

18. In the instant case, the child who was given out by the mother who claimed that she was born out of unwanted pregnancy, has found a warm and welcoming home. She is assured of basic provision like food, shelter, clothing and food. She has fully bonded with the adoptive family who have acknowledged her as their child entitled to the share of their inheritance. In my view, the adoption here is in the best interest of the child.

19. Accordingly, the application is allowed with orders that;

a. The Applicants are hereby authorized to adopt baby TM who henceforth shall be known as ZHH.

b. That the Child's date of birth shall be 31.12.2012

c. That the child is presumed to be a Kenyan citizen.

d. That the Registrar General is directed to enter the Adoption in the Adopted Children's Register.

e. That the Guardian Ad Litem is hereby discharged.

f. That AON and SN shall be the legal guardians to the child in case of the applicants' death or incapacitation.

Dated signed, delivered virtually at Mombasa this 4th day of March 2021.

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J.N. ONYIEGO

JUDGE